

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALAN T. BROOKS,	§
	§ No. 333, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 86002026DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 25, 2012  
Decided: August 21, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

**ORDER**

This 21st day of August 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Alan T. Brooks, filed an appeal from the Superior Court's June 4, 2012 order adopting the Commissioner's January 20, 2012 report, which recommended that Brooks' fifth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record before us reflects that, in March 1987, Brooks was found guilty by a Superior Court jury of Murder in the First Degree, Robbery in the First Degree, two counts of Kidnapping in the Second Degree, two counts of Conspiracy in the Second Degree, Attempted Robbery in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to life in prison plus fifty-two years. This Court affirmed Brooks' convictions on direct appeal.<sup>3</sup> Brooks subsequently filed four motions for postconviction relief in the Superior Court. This Court affirmed the Superior Court's denial of all four of those motions.<sup>4</sup>

(3) In this appeal from the Superior Court's denial of his fifth motion for postconviction relief, Brooks claims that the Superior Court erred and abused its discretion by denying his postconviction motion due to the existence of a) sealed exculpatory *Brady* material reflecting a deal between the State and one of its witnesses; and b) affidavits recently acquired by him

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Skinner, et al. v. State*, 575 A.2d 1108 (Del. 1990).

<sup>4</sup> *Brooks v. State*, Del. Supr., No. 383, 1993, Veasey, C.J. (Jan. 7, 1994); *Brooks v. State*, Del. Supr., No. 450, 2001, Veasey, C.J. (Nov. 27, 2001); *Brooks v. State*, Del. Supr., Nos. 106 & 236, 2008, Holland, J. (Dec. 18, 2008); *Brooks v. State*, Del. Supr., No. 735, 2009, Ridgely, J. (Apr. 16, 2010).

that recant the inculpatory trial testimony of two witnesses for the State. Brooks also contends that the Superior Court should have conducted an evidentiary hearing on his claims and should have expanded the record to include the properly-notarized affidavits that he submitted after he filed his postconviction motion.

(4) The Superior Court is required to apply the procedural requirements of Rule 61 prior to considering the substantive merits of claims made in postconviction proceedings.<sup>5</sup> In this case, the Superior Court properly concluded that Brooks' motion was time-barred.<sup>6</sup> Moreover, as the Superior Court properly concluded, Brooks' first claim was procedurally barred as previously adjudicated<sup>7</sup> because it was raised, unsuccessfully, in his fourth postconviction motion. Finally, in the absence of any evidence that reconsideration of the claim is warranted in the interest of justice<sup>8</sup> or that there was a miscarriage of justice due to a constitutional violation,<sup>9</sup> the Superior Court properly applied Rule 61's time and procedural bars and denied the claim.

(5) Brooks' second claim is that he merits relief in the form of a new trial because of recantation affidavits recently acquired by him. This

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<sup>5</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>6</sup> Super. Ct. Crim. R. 61(i) (1).

<sup>7</sup> Super. Ct. Crim. R. 61(i) (4).

<sup>8</sup> *Id.*

<sup>9</sup> Super. Ct. Crim. R. 61(i) (5).

Court has ruled that a motion for a new trial based upon a witness's recantation is generally viewed with suspicion.<sup>10</sup> Moreover, a new trial should be granted only where a) the court is reasonably well-satisfied that the trial testimony of a material witness was false; b) without the testimony, the jury might have reached a different conclusion; and c) the party against whom the testimony was given was taken by surprise when it was given and was unable to meet it or did not know of its falsity until after the trial.<sup>11</sup>

(6) In this case, the affidavits submitted by Brooks related to events that took place approximately twenty-five years ago and were signed by individuals who previously had provided contrary testimony under oath. The affidavits on their face raised questions, reflecting almost identical form and language. The Superior Court had no reason to suspect that the testimony originally given was false and had every reason to view the newly-minted affidavits with suspicion. Moreover, Brooks failed to demonstrate that, without the trial testimony, the jury might have reached a different conclusion and that he was surprised by the testimony given at trial. As such, we conclude that the Superior Court properly ruled that Brooks failed to satisfy the requirements of *Blankenship*.

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<sup>10</sup> *Blankenship v. State*, 447 A.2d 428, 433 (Del. 1982).

<sup>11</sup> *Id.*

(7) Finally, whether to hold an evidentiary hearing or to expand the record within the context of a postconviction motion are matters within the Superior Court's discretion.<sup>12</sup> We find no abuse of discretion with respect to the Superior Court's denial of Brooks' motion for an evidentiary hearing on his postconviction claims and its refusal to expand the record to include questionable affidavits that were not filed in proper form until Brooks' postconviction motion already had been submitted for decision.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>12</sup> Super. Ct. Crim. R. 61(g) (1) and (h) (1) & (3).